

KONIAG, INC.

IBLA 94-88      Decided March 5, 1996

Appeal from a decision of the Alaska State Office, Bureau of Land Management, rejecting in part an in-lieu selection application of Koniag, Inc. AA-8102-28.

Reversed and remanded.

1. Alaska: Native Claims Settlement Act: Generally--Alaska National Interest Lands Conservation Act: Special Land Settlements--Contracts: Construction and Operation: General Rules of Construction

A BLM decision rejecting a Native regional corporation in-lieu selection application because the corporation failed to relinquish lands in the application as required by a contract entered into by the Secretary of the Interior and the Native regional corporation will be reversed where the purpose of the contract was to correct a typographical error in the land description in sec. 1427(g)(3) of ANILCA, P.L. 96-487, 94 Stat. 2526 (1980), and place the United States and the corporation in the identical position they would have been in but for the error. Relinquishment of the in-lieu selection was not contemplated by the contract.

APPEARANCES: Jacquelyn R. Luke, Esq., Anchorage, Alaska, for appellant; Dennis J. Hopewell, Esq., Deputy Regional Solicitor, Office of the Regional Solicitor, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Koniag, Inc. (Koniag), a Native regional corporation organized pursuant to the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1601 (1988), for the Natives of the Kodiak Archipelago, has appealed from an October 12, 1993, decision of the Alaska State Office, Bureau of Land Management (BLM), rejecting in part Koniag's in-lieu subsurface selection application for lands in T. 38 S., R. 50 W., Seward Meridian. Koniag filed that application on December 16, 1975, under section 12(a)(1) of ANCSA, 43 U.S.C. § 1611(a)(1) (1988). The seven sections of selected lands

in dispute are secs. 7, 8, 16, 17, 18, 20, and 21, T. 38 S., R. 50 W., Seward Meridian, Alaska.

At the time of the passage of ANCSA in 1971, the Koniag Region contained insufficient available lands for the village corporations of that region to make their ANCSA selections because certain lands within the region were included in the Kodiak National Wildlife Refuge or the Chugach National Forest, and, under section 12(a)(1) of ANCSA, 43 U.S.C. § 1611(a)(1) (1988), village corporations could select only a limited amount of acreage within either a national wildlife refuge or a national forest. As a result, the village corporations were entitled to make what were known as deficiency selections on the Alaska Peninsula. Koniag was entitled to receive the subsurface estate of those selections.

In addition, section 12(a)(1) also provided that when a village corporation selected the surface estate of lands within a national wildlife refuge, the regional corporation would be entitled to select an equivalent amount of subsurface estate from other available lands withdrawn for the village corporations within the region. These alternate subsurface lands were referred to as in-lieu lands. Koniag filed selection application AA-8102 for in-lieu lands on the Alaska Peninsula.

In its statement of reasons for appeal (SOR) on page three, Koniag represents that, following its in-lieu selections, it and the village corporations negotiated with the Department of the Interior a proposed legislative modification of their land entitlements in order to resolve land selection problems in the region and satisfy the Department's desire to create additional wildlife refuges and national park units on the Alaska Peninsula in the vicinity of Koniag regional and village selections. Koniag states that the terms of that modification were set forth in section 1427 of the Alaska National Interest Lands Conservation Act of December 2, 1980 (ANILCA), P.L. 96-487, 94 Stat. 2371, 2518-28 (1980).

However, on April 23, 1980, prior to the passage of ANILCA, the Secretary of the Interior, Koniag, and Afognak Native Corporation, a Native village corporation, entered into a "Contract to Expedite Conveyance of Lands on the Alaska Peninsula" (Contract to Expedite), the purpose of which was to "expedit[e] a conveyance to Koniag and Afognak earlier than was originally scheduled in order that Koniag and Afognak might avail themselves of important economic opportunities," *i.e.*, the leasing of oil and gas (SOR, Exh. D at 1). The parties entered into the contract in contemplation of "legislation authorizing an exchange of land on the Alaska Peninsula for lands on Afognak Island" and, in accordance with paragraph 7 thereof, Koniag and Afognak were to, within 6 months of passage of section 1427 of ANILCA, "reconvey to the United States all interests in land owned by each of them not permitted to be conveyed to or retained by each of them on the Alaska Peninsula pursuant to the exchange" (SOR, Exh. D at 1, 5).

In accordance with that contract, the United States issued Interim Conveyance No. 340, dated June 20, 1980, to Koniag transferring title to

the subsurface estate of certain lands within a deficiency selection by the Afognak Native village corporation, including secs. 1-3, 10-15, 22-26, 35, and 36, T. 38 S., R. 50 W., and secs. 1, 2, 7, 8, 12, 13, 15-18, 20-22, 24, 25-27, and 35, T. 39 S., R. 50 W. In addition, in Interim Conveyance No. 341, of the same date, Koniag received the subsurface of additional lands, including T. 38 S., R. 50 W., sec. 27. That section was part of Koniag's in-lieu selected lands.

Thereafter, on December 2, 1980, Congress passed ANILCA, section 1427 of which dealt with Koniag regional and village corporation lands. In section 1427(g)(2), 94 Stat. 2526 (1980), Congress provided that nothing in section 1427 would affect Koniag's right, "subject to subsection (l) of this section," to its in-lieu subsurface estate on the Alaska Peninsula under sec. 12(a)(1). <sup>1/</sup> Also Congress provided that nothing in section 1427 would affect Koniag's right under ANCSA, again subject to subsection (l), to the subsurface estate in the deficiency lands described in section 1427(g)(3), 94 Stat. 2526-27 (1980).

This case has arisen because of a typographical error in the land description for deficiency lands included in section 1427(g)(3). Therein, the heading "Township 38 south, range 50 west" is listed twice. The 16 deficiency sections listed under T. 38 S., R. 50 W., in Interim Conveyance No. 340 appear under the first such heading. Then, instead of describing the 18 deficiency sections listed in Interim Conveyance No. 340 under T. 39 S., R. 50 W., Congress mistakenly listed those sections under an additional "Township 38 south, range 50 west" heading. (Emphasis added.) As a result, 10 sections of the deficiency lands (secs. 1, 2, 12, 13, 15, 22, 24, 25, 26, and 35) in T. 38 S., R. 50 W., were listed twice in section 1427(g)(3). Sec. 27 under the second heading had been included in the in-lieu subsurface conveyed to Koniag in Interim Conveyance No. 341. The other seven sections under the second heading (secs. 7, 8, 16, 17, 18, 20, and 21) are the lands at issue in this case. They were not included in either of the above-mentioned interim conveyances to Koniag. They were, however, listed in Koniag's 1975 in-lieu selection application.

In a March 23, 1981, letter to the Deputy Under Secretary, then counsel for Koniag suggested that, because of the difficulties attendant to a legislative solution to the mistaken description, they should work together to correct the error administratively. He then outlined an administrative solution.

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<sup>1/</sup> Subsection (l) states:

"In conveying subsurface estate to Koniag, Incorporated on the Alaska Peninsula, whether under subsection (g)(3) of this section or as in lieu subsurface estate as provided in sections 12(a)(1) and 14(f) of the Alaska Native Claims Settlement Act, the Secretary of the Interior shall retain all minerals other than oil and gas and sand and gravel used in connection with prospecting for, extracting, storing or removing oil and gas \* \* \*."

Subsequently, on November 2, 1981, the United States, acting through the Secretary of the Interior, and Koniag entered into a "Contract for the Exchange of Rights in Land on the Alaska Peninsula" (Exchange Agreement) to provide for an exchange of conveyances as outlined in counsel for Koniag's March 23, 1981, letter. In the Exchange Agreement, after outlining the background leading up to the agreement, the parties stated at paragraph F that the purpose of the contract was their mutual "desire, through consummation of the exchange hereinafter provided for to place both the United States and Koniag in the identical position they would have been in but for the typographical error in section 1427 of ANILCA" (SOR, Exh. G at 3).

The contract further provided for the execution by Koniag of quitclaim deeds conveying to the United States "all of Koniag's rights to subsurface estate in and to the following described lands in Township 38 south, range 50 west: sections 7, 8, 16, 17, 18, 28, 21 and 27, arising under section 1427 of ANILCA or under ANCSA" (paragraph 1(a)) and "all subsurface estate conveyed to Koniag by Interim Conveyance No. 340 and located in Township 39 south, range 50 west, Seward Meridian, Alaska," subject to certain oil and gas leases issued by Koniag (paragraph 1(b)) (SOR, Exh. G at 4). In exchange it provided for the United States to execute an Interim Conveyance conveying to Koniag the oil and gas and sand and gravel of the subsurface estate of secs. 1, 2, 7, 8, 12, 13, 15-18, 20-22, 24-27, and 35 in T. 39 S., R. 50 W., subject to section 1427(l) of ANILCA (paragraph 2) (SOR, Exh. G, at 4-5).

For whatever reasons, the exchange did not go forward as contemplated, and the matter languished for many years. In a June 10, 1991, letter to counsel for Koniag, the Deputy Regional Solicitor stated that he and his clients shared her frustration over the handling of the section 1427 reconveyances, but he noted that they were all "shackled with the task of trying to implement agreements that are neither clear nor complete. The passage of time has only made matters worse" (SOR, Exh. H at 1). Apparently, the parties had disagreed over the nature of the title Koniag was to reconvey to the United States, but the Deputy Regional Solicitor stated that "we are now persuaded that Koniag is entitled to retain a 'subsurface' interest \* \* \* and not just an oil and gas interest." *Id.* In an attempt to explain the Department's position, which had been abandoned, he stated:

The basis for our concerns was paragraph 1(b), page 4, of the Contract for the Exchange of Rights in Land on the Alaska Peninsula entered into on November 2, 1981 between the Secretary and the President of Koniag. That paragraph provides that Koniag will "convey 'all subsurface estate' in certain specified lands to the United States. \* \* \* Paragraph 2 of the Contract for the Exchange of Rights says only that the United States is to convey "the oil and gas and [sand and] gravel of the subsurface estate" (emphasis added). Moreover, paragraph 9, page 6, of the Contract to Expedite Conveyance of Lands on the Alaska Peninsula, seems to support a finding of a less-than-full subsurface, oil and gas

only, estate by providing that Koniag will not create any third-party interest in the land except in oil and gas rights.

Id. at 1-2.

The Deputy Regional Solicitor then stated:

[O]n further review we are persuaded to the reasonableness of your view. As you have pointed out, the statutory language of Section 1427(l) [el] of the Alaska National Interest Lands Conservation Act [ANILCA] does call for a conveyance of a "subsurface estate to Koniag." In addition, a reading of the two agreements in their entirety, attempting to reconcile every provision, also supports your position that Koniag is to receive a subsurface estate subject to the limitations of Section 1427(l) [el] of ANILCA.

Id. at 2.

However, with regard to the lands now at issue, the Deputy Regional Solicitor stated:

We cannot, however, agree that Koniag has current selection rights on land in T. 38 S., R. 50 W. Paragraph 1(a) of the Contract for the Exchange of Rights expressly provides that Koniag will release all rights to lands in T. 38 S., R. 50 W. "arising under Section 1427 of ANILCA or under ANCSA (emphasis added)." Accordingly, I do not see how Koniag can assert in lieu selections for the land under Sections 12 and 14 of ANCSA.

Id.

In a letter to Koniag dated March 3, 1993, BLM renewed an earlier request for relinquishment of Koniag's in-lieu application for the seven sections of land in T. 38 S., R. 50 W. <sup>2/</sup> BLM warned that if it did not eventually receive the relinquishment, it would reject the selection application for those lands (SOR, Exh. J).

On June 23, 1993, BLM accepted two quitclaim deeds from Koniag. One reconveying to the United States all of its right, title, and interest, if any, in all minerals other than oil and gas and, to the extent provided by section 1427(l) of ANILCA, in sand and gravel, in the subsurface estate, inter alia, of the 16 sections listed under the first "Township 38 south, range 50 west" heading in section 1427(g)(3) of

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<sup>2/</sup> That request, which BLM originally made in a letter to Koniag, dated Feb. 6, 1991 (BLM Answer, Exh. 1 at 1), called for a relinquishment, rather than a quitclaim deed, of those lands, despite the fact that the Exchange Agreement required a quitclaim deed.

ANILCA and included in Interim Conveyance No. 340 and sec. 27, T. 38 S., R. 50 W., which had been conveyed in Interim Conveyance No. 341 (SOR, Exh. I at 3-6). The other conveyed to the United States and its assigns, inter alia, the same interest in the 18 sections listed under the erroneous second "Township 38 south, range 50 west" heading in section 1427(g)(3) of ANILCA, but correctly described in the quitclaim deed and in Interim Conveyance No. 340 as being within T. 39 S., R. 50 W. (SOR, Exh. I at 7-9).

Thus, rather than exchange conveyances, as outlined in the Exchange Agreement, the parties agreed that Koniag need only quitclaim all but the limited subsurface estate, as set forth in section 1427(l) of ANILCA, in the two deeds accepted in 1993. However, Koniag did not comply with BLM's request for a relinquishment of the seven sections in T. 38 S., R. 50 W.

In its decision dated October 13, 1993, BLM stated that under the Exchange Agreement, Koniag was required to convey and quitclaim all rights arising under ANILCA or ANCSA to eight sections of land (7, 8, 16, 17, 18, 20, 21, and 27) in T. 38 S., R. 50 W. It then stated:

Koniag was previously conveyed the subsurface estate in Sec. 27, T. 38 S., R. 50 W. under Sec. 14(f) of ANCSA. Instead of deeding back all rights, as required by the Contract, Koniag only deeded back "all minerals other than oil and gas and to the extent provided by Section 1427(l) . . . sand and gravel." Since Koniag has not deeded back its entire interest in Section 27, its in-lieu entitlement remains charged for those 640 acres.

Koniag's only interest in Sections 7, 8, 16, 17, 18, 20, and 21, T. 38 S., R. 50 W. is its in-lieu selection filed under Sec. 12(a) of ANCSA. Koniag has not voluntarily relinquished its selection. Therefore, pursuant to the Exchange Agreement of Rights in Land on the Alaska Peninsula, between the United States and Koniag, dated November 2, 1981, in-lieu selection AA-8102028 is hereby rejected" [for secs. 7, 8, 16, 17, 18, 20, and 21, T. 38 S., R. 50 W.] [Emphasis in original; footnote omitted.]

(Decision at 2).

The sole basis for BLM's action in this case, as explained in the decision and in BLM's Answer, is that the Exchange Agreement expressly prohibits Koniag from acquiring the seven sections at issue. The language cited by BLM, and quoted in both its decision and Answer, is paragraph 1(a) of the Exchange Agreement requiring Koniag to convey by quitclaim deed all its rights to the subsurface estate in the seven sections "arising under section 1427 of ANILCA or ANCSA." As stated by BLM in its answer on page three:

Since the Exchange Agreement required Koniag to quit claim all its interests under ANILCA or ANCSA to the identified sections of

land and since Koniag did not relinquish its selections, the BLM rejected the selections on the basis that Koniag had no further interest in or right to the described sections, other than section 27 to which it already received conveyance.

BLM asserts that its position in the case is consistent with paragraph E of the Exchange Agreement, which "articulated that, due to a mistake in section 1427 of ANILCA, Koniag was erroneously entitled to sections 7, 8, 16, 17, 18, 20, 21 and 27 in T. 38 S., R. 50 W., 'which interests in land were not intended by the Secretary o[r] Koniag to be conveyed to Koniag'" (Answer at 3).

Koniag, on the other hand, asserts that the Exchange Agreement had a singular purpose, which was, as announced in paragraph F thereof, "to place both the United States and Koniag in the identical position they would have been in but for the typographical error in section 1427 of ANILCA." Koniag also points to paragraph 3 of the agreement which states that "[t]he Secretary finds this exchange is made for the purpose of correcting the typographical error contained in section 1427(g) of ANILCA \* \* \*."

Koniag contends that one of the basic principles of the law of contracts is that agreements are to be construed to give effect to the intent of the parties, citing Alaska Pipeline Co., 38 IBLA 1 (1978). Rejection of its in-lieu selection application for the lands in question, it argues, is not consistent with the intent of the parties to the agreement as evidenced by the record.

For the reasons stated below, we agree with Koniag, and, therefore, reverse BLM's decision.

[1] Federal law, which controls the construction of Federal contracts, follows principles of general contract law. Asarco Inc., 116 IBLA 120, 126 (1990), and cases cited. A primary task of contract interpretation is to ascertain the intent of the parties from the language of the contract and the circumstances under which it was made by giving contract provisions their natural and most commonly understood meaning. Gibbs v. Air Canada, 810 F.2d 1529, 1533 (11th Cir. 1987). "[T]he fundamental object of all rules of interpretation, whether primary or secondary, is to ascertain and give effect to the intention of the parties." 4 S. Williston, A Treatise On The Law Of Contracts § 618 at 718-19 (3d ed. 1961). The intention of the parties to a contract is controlling over the literal meaning of isolated expressions. M. K. Metals, Inc. v. National Steel Corp., 593 F. Supp. 981, 991 (E.D. Mich. 1984). The intention of the parties is ascertained from the complete document, and not from detached or isolated provisions. Id.

Under section 1427(g)(2) of ANILCA, Koniag was entitled to retain all of its in-lieu selections on the Alaska Peninsula, subject to section 1427(l), which limited them to oil and gas and sand and gravel used

in connection with prospecting for, extracting, storing or removing oil and gas. Subsequent to ANILCA, the parties entered into the Exchange Agreement. There is no need to scour the Exchange Agreement to decipher the intent of the parties. Their intent is expressly set forth in paragraph F. It was merely to correct the typographical error and place the parties in their identical positions prior thereto. Koniag did not have to give up any valid, in-lieu selections rights in order to correct the typographical error in section 1427(g)(3); all it had to do was give up the rights granted by that subsection to the erroneously described lands. BLM states that its "reason for rejecting Koniag's seven sections of in lieu subsurface selection was the specific wording of [paragraph 1(a)] of the Exchange Agreement" (Answer at 2). It asserts that in the Exchange Agreement, "for some unarticulated reason, Koniag and the United States agreed that Koniag would not be entitled to the sections in T. 38 S., R. 50 W. identified in the Exchange Agreement" (Answer at 3).

BLM's construction of paragraph 1(a) is an attempt to attach to the language of paragraph 1(a) a literal meaning which goes beyond the intent of the Exchange Agreement. For that reason alone, it must be rejected. 3/

However, there are other reasons why BLM's construction of paragraph 1(a) is unacceptable. Koniag notes that the Exchange Agreement would most likely have adverted to relinquishment by Koniag as one of its purposes, if the parties had so intended (SOR at 12-13). Yet, the Exchange Agreement called for a quitclaim deed, not a typical method of relinquishing any type of public land application. The fact that paragraph 1(a) of the Exchange Agreement dictated a quitclaim deed undercuts BLM's construction that Koniag and the United States agreed that Koniag would lose its in-lieu selection of the lands in question. The reason is that it is well understood that the filing of an application with BLM does not confer a right, but establishes at best an expectation that a right may be acquired in the future. Steve D. Mayberry, 82 IBLA 339, 343 (1984); Nola Grace Ptasynski, 82 IBLA 48, 52 (1984); James H. W. Tseng, 69 IBLA 387, 389 (1983). Thus, it is questionable whether a quitclaim deed, which transfers only the interest of the grantor in the land conveyed at the time of the conveyance, would have had any effect on Koniag's in-lieu selection application. Perhaps it is this reason why BLM demanded relinquishment of the application for the seven sections, an action neither required nor contemplated by the Exchange Agreement.

The other language of the Exchange Agreement cited by BLM in support of its position is paragraph E. Upon close reading, it does not.

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3/ Koniag points out that the fact that paragraph 1(a) mentions ANCSA is not surprising in that section 1427(f) of ANILCA provides that all conveyances made pursuant to section 1427 were to be considered conveyances pursuant to ANCSA. Therefore, the lands described in subsection (g)(3) could be construed as passing under ANCSA.



Paragraph E states that as a result of the typographical error Koniag was entitled to receive a limited subsurface estate in eight sections of land

(the seven sections in question in this case and sec. 27), "which interests in land were not intended either by the Secretary or Koniag to be conveyed to Koniag." Sec. 27, however, which was one of the sections listed in paragraph E, had previously been conveyed to Koniag as in-lieu lands in Interim Conveyance No. 341 in partial satisfaction of the Contract to Expedite. Clearly, that section was one which both the Secretary and Koniag intended to be conveyed to Koniag. And, in fact, the United States accepted Koniag's reconveyance of part of the subsurface estate of sec. 27 in one of the quitclaim deeds (SOR, Exh. I at 3-6). Thus, the language of paragraph E makes sense only if it is read in light of the intent of the parties, which was merely to correct the mistake in section 1427(g)(3). The most reasonable interpretation of the language of paragraph E, and the one which is supported by the facts, is that neither the Secretary nor Koniag intended that the eight sections of in-lieu selected land be conveyed to Koniag as deficiency lands under section 1427(g)(3).

It is also clear that the parties have not adhered to the letter of the Exchange Agreement in their past actions. In his June 10, 1991, letter to counsel for Koniag, the Deputy Regional Solicitor described the parties as being "shackled with the task of trying to implement agreements [Contract to Expedite and the Exchange Agreement] that are neither clear nor complete." Therein, he agreed with Koniag that the interest it was to receive was the interest as stated in section 1427(l) of ANILCA, not that detailed in paragraph 2 of the Exchange Agreement. Likewise, the parties agreed that the intent of the agreement could be achieved by having Koniag quitclaim those interests it was not allowed to retain, rather than engage in the exchange of documents directed by the Exchange Agreement. Thus, BLM's position that a literal reading of paragraph 1(a) should control in this case is not only inconsistent with the intent of the parties, but also contradicts their past actions regarding the Exchange Agreement.

Koniag's interpretation of the Exchange Agreement, under which it would divest itself of any interests in the erroneously described lands created by the typographical error in section 1427(g)(3), but which preserves its preexisting in-lieu rights in those lands, is consistent with the parties' intent. BLM's interpretation is not, because it does not put the parties in their identical positions prior to the mistake.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case is remanded. On remand, Koniag shall be required only to divest itself of any interests in the erroneously described lands created by the typographical error in section 1427(g)(3). This could be accomplished by quitclaiming to the United States any interest in the seven sections in question created by the typographical error

in section 1427(g)(3). Whatever the method of reconveyance, it shall have no effect on Koniag's in-lieu selection of those same lands.

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Bruce R. Harris  
Deputy Chief Administrative Judge

I concur.

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John H. Kelly  
Administrative Judge

